MAINE SUPREME JUDICIAL COURT Reporter of Decisions
Decision: 2012 ME 108
Docket: BCD-11-525
Argued: May 9, 2012
Decided: August 14, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

THOMAS BARR JR. et al.

v.

RICHARD DYKE et al.

SAUFLEY, C.J.

[¶1] In this appeal, we are asked to determine the enforceability of contracts, executed in settlement of contentious litigation, by which minority shareholders agreed to sell their stock in a corporation back to that corporation in order to resolve claims alleging breaches of fiduciary duties by corporate officers and directors. Although the minority shareholders explicitly disclaimed reliance on the corporation and its officers and directors in determining the value of the stock that they were selling pursuant to the settlement agreement, they now seek to avoid enforcement of that disclaimer-of-reliance clause.

[¶2] Specifically, former Bushmaster shareholders Thomas Barr Jr. and Claude Warren appeal from a judgment entered in the Business and Consumer Docket (*Horton, J.*) in which the court granted summary judgment to all

defendants on Barr and Warren's complaint seeking rescission and other remedies based on claims of breach of fiduciary duty, fraud, unjust enrichment, and infliction of emotional distress. The court concluded that the terms of the stock purchase agreement and general release executed in settlement of Barr and Warren's prior claims must be enforced in the circumstances of this case. We affirm the judgment.

I. BACKGROUND

[¶3] The following facts are not in dispute, except as indicated. In 2002, Thomas Barr Jr. and Claude Warren were minority stockholders of Bushmaster, Inc., collectively holding 29.09% of the company's stock. Also in 2002, Barr and Warren sued Richard Dyke, Jeffrey Dyke, and Allen Faraday, Bushmaster's directors at the time, alleging breach of their fiduciary duties. The claims arose from allegations that the Dykes and Faraday attempted to force Barr and Warren out of their employment with the company, increased their own compensation excessively, used corporate assets for personal purposes, and acted to decrease the profits that would be distributed to minority shareholders.

[¶4] After the taking of ten depositions and the execution of six sets of document requests, the parties met in 2004 at a judicial settlement conference. Trial was imminent. The parties reached an agreement by which Barr and Warren would sell their shares to Bushmaster for a total of $8,000,000. To effectuate that

agreement, the parties executed a stock purchase agreement, which included Barr's and Warren's acknowledgements that they had independently evaluated the company's value without relying on Bushmaster or its officers and directors and that they had received all requested documents. The contract, which referred to Barr and Warren as "the Sellers," stated as follows:

> 2. Representations and Warranties of Seller.
>
> . . . .
>
> (b) Each Seller hereby acknowledges, represents and warrants as follows:
>
> (i) Such Seller is familiar with the business, financial condition, results of operations, prospects and affairs of Purchaser.
>
> (ii) Such Seller has made his own independent determination of the value of Purchaser and the Shares being sold by such Seller, based upon (inter alia) the valuation studies and analyses of Spinglass Associates, Sellers' financial adviser.
>
> (iii) Such Seller has had a full and adequate opportunity to consult with, and has consulted with, his own counsel with respect to the transactions contemplated by this Agreement, and has had a full and adequate opportunity to consult with, and has consulted with, such other advisors and representatives as he has deemed necessary or desirable in order to advise such Seller in connection with the transactions contemplated by this Agreement.
>
> (iv) Such Seller *has not relied* on Purchaser or any of its directors, officers, shareholders, employees or agents with respect to any assessment of the value of Purchaser or the Shares being sold by such Seller hereunder or the advisability

> of entering into this Agreement and the transactions contemplated by it.
>
> (v) Such Seller has received and reviewed copies of Purchaser's financial statements as of and for the periods ended December 31, 2003, 2002, 2001, 2000 and 1999 (together with the reports of Purchaser's independent public accountants with respect thereto) and Purchaser's interim financial statements as of and for each of the quarterly periods to and including the quarter ended July 2, 2004 (the "Financial Statements"), and has received from the Purchaser all items requested by him concerning Purchaser, its business, assets, financial condition and prospects.
>
> (vi) This Agreement constitutes such Seller's valid and binding obligation, enforceable against such Seller in accordance with its terms. The execution and delivery of this Agreement and the consummation by such Seller of the transactions contemplated hereby do not and will not violate or conflict with any agreement or instrument to which such Seller is a party or by which he or his assets are bound.

(Emphasis added.) The parties also executed a separate general release from liability of the named defendants; Bushmaster; its officers, directors, employees, subsidiaries, affiliates, agents, and attorneys; and all of their respective successors and assigns for any acts preceding the execution of the settlement.

[¶5] Two years later, in 2006, Bushmaster was acquired by an unrelated third party. Barr and Warren allege that Bushmaster was sold for $76,000,000,

which represented a value significantly greater than the approximately $27,500,000 value reflected by the purchase price in the settlement contract.[1]

[¶6] Barr and Warren filed their current complaint in April 2010. As amended, the complaint alleged that, during the course of the earlier lawsuit, (1) as directors, Richard Dyke, Jeffrey Dyke, and Faraday breached duties of loyalty and care by making false and misleading statements and by omitting and concealing information; (2) as officers, Richard Dyke, Jeffrey Dyke, John DeSantis, Faraday, and Richard Thurston similarly breached duties of loyalty and care; (3) the Dykes, DeSantis, Faraday, and Thurston committed fraud by misrepresenting backorders, concealing the basis for shifts in sales, concealing a report that valued the company at $35,000,000, and concealing that they had put Bushmaster up for sale and made representations of a higher value to potential purchasers; (4) the Dykes, DeSantis, Faraday, and Thurston had been unjustly enriched; (5) the Dykes, DeSantis, Faraday, and Thurston had intentionally, recklessly, or negligently inflicted emotional distress; and (6) rescission should be permitted as a remedy against all defendants, including former Bushmaster shareholders T. Scott Kent; Thomas

[1] The parties did not explicitly agree on the value of the company at the time of settlement. Instead, they negotiated over the selling price for the minority shareholders' stock, which we have roughly translated into a perceived value of the corporation at the time of the settlement in our effort to view the facts in the light most favorable to the minority shareholders against whom summary judgment was entered.

Kent; Bangor Savings Bank as trustee for the Jeffrey Trust U/I Dated May 16, 1975, and Jeffrey E. Dyke Irrevocable Trust; and the Richard E. Dyke Foundation.

[¶7] With their answer, the Dykes, DeSantis, Faraday, Thurston, and the Kents asserted several defenses, including the express waiver of claims, release, and accord and satisfaction, and a counterclaim for breach of the general release and stock purchase agreement that had been executed in settlement of the earlier claims. All other defendants filed answers that asserted affirmative defenses but no counterclaims.

[¶8] The defendants then moved for summary judgment on the ground that the agreements entered in settlement of the earlier claims precluded these new claims, and they submitted a supporting statement of material facts pursuant to M.R. Civ. P. 56(h)(1). They attached copies of deposition transcripts, the parties' stock purchase agreement and general release signed upon settlement of the prior action, and certain pleadings and discovery responses from the earlier action and the present action.

[¶9] Barr and Warren answered the counterclaim and filed an opposing memorandum with an opposing statement of material facts and additional facts. *See* M.R. Civ. P. 56(h)(2). In their opposing statement, Barr and Warren asserted that they would not have agreed to sell their shares for $8,000,000 in settlement of the earlier litigation had they known that (1) Bushmaster had a substantial backlog

of orders, (2) controlling stockholders believed the company to be worth approximately $35,000,000 rather than the $27,500,000 value that Barr and Warren estimated at settlement, and (3) the corporation was being prepared for sale.[2] They offered evidence in an effort to establish that they had not been fully informed and had relied on misleading materials provided by the officers or directors regarding the value of the Bushmaster stock. The additional facts asserted by Barr and Warren primarily related to the roles of the various officers, directors, and shareholders; the defendants admitted all of those additional facts in their reply statement of material facts. *See* M.R. Civ. P. 56(h)(3).

[¶10] The court enforced the stock purchase agreement's disclaimer-of-reliance clause and the general release, and entered a summary judgment for all defendants on the complaint. The court entered summary judgment on the emotional distress and unjust enrichment claims because it concluded that those claims relied on the fraud allegations that were prevented by the settlement agreements and that Barr and Warren failed to offer evidence of severe emotional distress.

[¶11] After the defendants stipulated to the dismissal of their counterclaim, the court entered a final judgment in favor of the defendants and ordered Barr and

[2] The value of the stock was considered for separate purposes in *Warren v. Warren*, 2005 ME 9, ¶¶ 22-40, 866 A.2d 97.

Warren to pay costs of $5347.85 to the Dykes, DeSantis, Faraday, Thurston, the Kents, and the Richard E. Dyke Foundation. Barr and Warren appealed to us pursuant to 14 M.R.S. § 1851 (2011) and M.R. App. P. 2.

II. DISCUSSION

[¶12] "We review an entry of summary judgment for errors of law, viewing the evidence in the parties' statements of material facts and any record references therein in the light most favorable to the party against whom the judgment was entered . . . ." *Estate of Cummings v. Davie*, 2012 ME 43, ¶ 9, 40 A.3d 971 (quotation marks omitted). Thus, we "independently determine whether the record supports the conclusion that there is no genuine issue of material fact and that the prevailing party is entitled to judgment as a matter of law." *Hutz v. Alden*, 2011 ME 27, ¶ 12, 12 A.3d 1174 (quotation marks omitted).

A. Enforceability of Disclaimer-of-Reliance Clause

1. Maine Contract Law

[¶13] Pursuant to Maine contract law, an agreement is legally binding if the parties "mutually assented to be bound by all its material terms; the assent [was] manifested in the contract, either expressly or impliedly; and the contract [was] sufficiently definite to enable the court to determine its exact meaning and fix exactly the legal liabilities of the parties." *Stanton v. Univ. of Me. Sys.*, 2001 ME 96, ¶ 13, 773 A.2d 1045 (quotation marks omitted). If each party communicated to

the other a "distinct and common intention," the contract will be enforceable. *Id.* (quotation marks omitted). We interpret the unambiguous terms of a contract according to their ordinary meaning, *see Travelers Indem. Co. v. Bryant*, 2012 ME 38, ¶ 9, 38 A.3d 1267, unless the contract explicitly provides otherwise, *see, e.g.*, *ABN AMRO Mortg. Group v. Willis*, 2003 ME 98, ¶¶ 3, 4, 829 A.2d 527 (applying contract's definition of "default" when construing a mortgage contract).

[¶14] After reviewing the stock purchase agreement in the matter before us, we conclude, as did the motion court, that the contract is detailed, comprehensive, and more than sufficiently definite for the court to discern its meaning and apply its terms. The disclaimer-of-reliance clause is itself specific and unambiguous. It encompasses the very challenge now presented by Barr and Warren—that is, a challenge to representations and omissions regarding the value of the corporation and its stock. Accordingly, absent some other impediment, the contract is enforceable, the disclaimer of reliance precludes a claim based on allegations of misrepresentation regarding the value of the stock, and judgment should be entered in favor of the defendants.

[¶15] Notwithstanding the unambiguous language of the contract, however, the minority shareholders urge us to conclude, based on allegations of fraud, or as a matter of judicial policy, that the disclaimer-of-reliance provision should not be enforced.

2. Fraud

[¶16] We can quickly dispose of Barr and Warren's argument that allegations of fraud overcome the terms of the contract. Fraud in the inducement of a contract may vitiate the terms of that contract. *See Harriman v. Maddocks*, 560 A.2d 11, 12-13 (Me. 1989); *see also LeClair v. Wells*, 395 A.2d 452, 453 (Me. 1978). The burden to establish fraud is on the party seeking to vitiate the effect of his or her act. *See Harriman*, 560 A.2d at 13. To establish a claim of fraud or fraudulent misrepresentation, a party must demonstrate *reliance. See Flaherty v. Muther*, 2011 ME 32, ¶ 45, 17 A.3d 640. Indeed, all five elements of fraud, including the element of reliance, must be demonstrated by clear and convincing evidence:

(1) A party made a false representation,

(2) The representation was of a material fact,

(3) The representation was made with knowledge of its falsity or in reckless disregard of whether it was true or false,

(4) The representation was made for the purpose of inducing another party to act in reliance upon it, and

(5) The other party *justifiably relied upon the representation* as true and acted upon it to the party's damage.

See id. Similarly, to establish fraudulent concealment, proof of reliance is among the elements that must be shown. Those elements are:

> (1) a failure to disclose; (2) a material fact; (3) where a legal or equitable duty to disclose exists; (4) with the intention of inducing another to act or to refrain from acting in reliance on the non-disclosure; and (5) which is *in fact relied upon* to the aggrieved party's detriment.

Picher v. Roman Catholic Bishop of Portland, 2009 ME 67, ¶ 30, 974 A.2d 286 (emphasis added).

[¶17] Therefore, to prevail on a claim of fraud, the plaintiff must be able to prove reliance on the representations of the party alleged to have committed the fraud. Through the stock purchase agreement, Barr and Warren specifically disclaimed reliance on Bushmaster's officers' and directors' representations related to the value of the Bushmaster stock. Our analysis would ordinarily end here. The contract was clear and complete, and the disclaimer of reliance was explicit and covered the claims at issue here. We go on, however, to address the argument that the court should decline to enforce the disclaimer on public policy grounds.

3. Enforceability of Disclaimer-of-Reliance Clauses

[¶18] There is a growing body of case law through which courts have applied more intense scrutiny to contractual waivers and disclaimers. *See, e.g.*, *Slack v. James*, 614 S.E.2d 636, 641 (S.C. 2005) (stating that a general non-reliance clause does not prevent claims of misrepresentation and fraud). This

heightened scrutiny arises from concerns that contracts should not be used to shield parties from liability for their own fraud. *See id.*; *see also Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Dev. Corp.*, 38 Cal. Rptr. 2d 783, 785, 790 (Cal. Ct. App. 1995) (holding that a contract provision stating that no representations were made by the parties except as stated in the agreement did not preclude allegations of fraud). Courts have particularly noted that the rigid enforcement of disclaimer-of-reliance clauses contained in consumer contracts or contracts of adhesion may be inappropriate. *See Whitney Nat'l Bank v. Air Ambulance by B&C Flight Mgmt., Inc.*, 2007 U.S. Dist. LEXIS 31482, at *29-31 (S.D. Tex. April 30, 2007) (suggesting that disclaimers of reliance in contracts of adhesion might not be enforced); *cf. Slack*, 614 S.E.2d 636 (stating, in a case involving real estate purchase-and-sale agreement, that a fraud claim may be tried despite the presence of a general non-reliance clause).

[¶19] The contract before us, however, is neither a consumer-based contract nor even arguably a contract of adhesion. The question presented, therefore, is whether the disclaimer-of-reliance clause, or the contract as a whole, is vitiated due to other circumstances surrounding the parties' agreement, specifically, the previously existing fiduciary relationship between the parties, or whether instead the clause should be enforced and thereby preclude allegations of fraud, which require reliance as an essential element.

[¶20] We have not had the occasion to address whether a court should enforce a disclaimer-of-reliance clause executed in furtherance of a negotiated settlement of litigation in the face of allegations of fraud in the inducement by fiduciaries. Other courts have, however, addressed issues regarding the enforceability of releases and disclaimer clauses in similar circumstances.

a. Disclaimer-of-Reliance Clauses

[¶21] In certain circumstances, courts have held that general disclaimers or releases of claims may be avoided upon a demonstration of fraud. *See, e.g.*, *Wal-Mart Stores, Inc. v. Coughlin*, 255 S.W.3d 424, 428-31 (Ark. 2007) (permitting a corporation to sue a retired officer and director for fraud and rescission of a retirement agreement despite a general release contained in the agreement); *W. A. McMichael Constr. Co. v. D & W Props., Inc.*, 356 So. 2d 1115, 1124-25 (La. Ct. App. 1978) (holding that, although public policy favors compromise settlements, they may be set aside despite a general release upon a finding of a fraudulent failure to disclose by a fiduciary).

[¶22] With regard to disclaimer-of-reliance clauses in particular, however, courts have favored enforcement when the parties were experienced businesspeople. In Delaware, for instance, an unambiguous disclaimer-of-reliance clause in a contract between sophisticated parties will generally be enforced and preclude claims of extrinsic fraud. *See RAA Mgmt., LLC v. Savage Sports*

Holdings, Inc., 45 A.3d 107, 116-19 (Del. 2012) (applying New York law but stating that Delaware law is the same). The court reached this holding because it reasoned that valid, negotiated contracts should be enforced in the courts according to their plain terms, particularly when the party asserting reliance is claiming to have misrepresented that fact in the agreement. *Id.* at 117-19; *see also Danann Realty Corp. v. Harris*, 157 N.E.2d 597, 600 (N.Y. 1959).

[¶23] Based on these same considerations, New York courts have held that the determination of whether a disclaimer-of-reliance clause will be enforced depends on (1) whether the complaining party was a corporation and was advised by counsel, *see Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 952 N.E.2d 995, 1001-02 (N.Y. 2011); *see generally Danann Realty Corp.*, 157 N.E.2d at 599-600; (2) whether the complaining party knew that existing information had not been provided as of the time of settlement, *see Centro Empresarial*, 952 N.E.2d at 1002; and (3) whether fraud separate from the fraud settled through the release can be established, *id.* at 1002-03.

[¶24] The Texas Supreme Court has similarly referenced five factors as providing guidance in determining that a disclaimer-of-reliance clause executed as part of a settlement should be enforced:

> (1) the terms of the contract were negotiated, rather than boilerplate, and during negotiations the parties specifically discussed the issue which has become the topic of the subsequent dispute; (2) the

> complaining party was represented by counsel; (3) the parties dealt with each other in an arm's length transaction; (4) the parties were knowledgeable in business matters; and (5) the release language was clear.

Forest Oil Corp. v. McAllen, 268 S.W.3d 51, 60 (Tex. 2008). That court held that settlement agreements, favored by law, should not be set aside based on after-the-fact, "easily lodged" protests of misrepresentation. *Id.* Failure to enforce such contracts, the court opined, would "grievously impair[]" freedom of contract. *Id.* at 61.

b. Disclaimer-of-Reliance Clauses Between Fiduciaries and Parties with Special Knowledge

[¶25] Barr and Warren argue, nonetheless, that we should decline to enforce disclaimer-of-reliance clauses when the party seeking enforcement was in a fiduciary relationship to the party alleging fraud. This argument, although relying on well-established duties of fiduciaries, ignores the reality that, when parties in a fiduciary relationship have become adversaries and are seeking to settle a dispute, they ordinarily have discarded the relationship of trust in pressing the dispute; certainly they have done so by the time they are entering into an agreement disclaiming reliance in settlement of litigation. *See Finn v. Prudential-Bache Secs., Inc.*, 821 F.2d 581, 586 (11th Cir. 1987) (applying Florida law); *Pettinelli v. Danzig*, 722 F.2d 706, 707-08, 710 (11th Cir. 1984) (applying Florida law); *Walter v. Holiday Inns, Inc.*, 784 F. Supp. 1159, 1167-68 (D.N.J. 1992). Courts will

therefore enforce disclaimer-of-reliance clauses even between fiduciaries when, as during litigation, fiduciaries are no longer justified in relying on one another. *See Finn*, 821 F.2d at 586; *Pettinelli*, 722 F.2d at 710.

[¶26] Similarly, a disclaimer of reliance by a sophisticated party may be enforced in the face of allegations of fraud even if the party alleged to have committed fraud has peculiar knowledge of, or access to, pertinent information. *See RAA Mgmt., LLC*, 45 A.3d at 115-16. Without predictable judicial enforcement, agreements that depend on such protections against suit could never be reached, and business decisions reached in the course of settlement would never be final. *See, e.g.*, *id.* at 119 (involving a non-reliance provision contained in a nondisclosure agreement entered into in order to obtain due diligence information for research into a potential corporate sale).

c. Factors for Enforcement

[¶27] Having considered the importance of contract enforcement as well as the law of fraud, we conclude that several factors are properly considered for purposes of determining the enforceability of a disclaimer-of-reliance clause when a party has alleged fraud by fiduciaries in the execution of the contract containing that clause:

(1) Whether the complaining party was advised by counsel;[3]

(2) Whether the terms of the agreement were negotiated and not boilerplate;[4]

(3) Whether the transaction was an arm's-length transaction;[5]

(4) Whether the parties were knowledgeable in business matters;[6]

(5) Whether the language of the clause was clear;[7] and

(6) Whether, if litigation was against a fiduciary, the adversarial relationship of the parties demonstrated an absence of trust between the parties that negated any claim of reasonable reliance.[8]

Although no one factor will be dispositive, these circumstances will be considered by a court determining whether to enforce the plain language of a disclaimer-of-reliance clause in the face of allegations of fraud. When the language of a contract is unambiguous and disclaims reliance regarding the subject

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[3] *See Centro Empresarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 952 N.E.2d 995, 1001-02 (N.Y. 2011); *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 60 (Tex. 2008).

[4] *See Forest Oil Corp.*, 268 S.W.3d at 60.

[5] *See id.*

[6] *See id.*; *see also RAA Mgmt., LLC v. Savage Sports Holdings, Inc.*, 45 A.3d 107, 116-19 (Del. 2012); *Danann Realty Corp. v. Harris*, 157 N.E.2d 597, 599-600 (N.Y. 1959).

[7] *Forest Oil Corp.*, 268 S.W.3d at 60.

[8] *See Finn v. Prudential-Bache Secs., Inc.*, 821 F.2d 581, 586 (11th Cir. 1987); *Walter v. Holiday Inns, Inc.*, 784 F. Supp. 1159, 1167-68 (D.N.J. 1992); *see also Ferrell v. Cox*, 617 A.2d 1003, 1006 (Me. 1992) (holding that reliance on a misrepresentation is unjustified if the falsity is known or obvious).

of a later allegation of fraud, the party seeking to survive a summary judgment motion and avoid the contractual disclaimer of reliance bears the burden of producing evidence that demonstrates a genuine issue of material fact regarding these factors.[9]

d. Review of the Court's Ruling on Summary Judgment

[¶28] In its ruling on the summary judgment motion at issue in this case, the Superior Court appropriately considered a number of the factors that properly inform the determination of whether a disclaimer-of-reliance clause is enforceable or whether, given the circumstances of the agreement, the claims based on reliance will survive summary judgment. We review the resulting summary judgment entered against Barr and Warren de novo to determine whether the statements of material facts and supporting evidence demonstrate the perpetration of fraud in circumstances that could excuse Barr and Warren from being held to their disclaimer of reliance on corporate valuation information.

[¶29] The summary judgment record demonstrates the following: the language of the disclaimer was clear; there is no pending allegation or proof of fraud that falls outside the scope of that disclaimer; Barr and Warren were businessmen who were familiar with the company and obtained or had the

[9] *See Extra Equipamentos e Exportacao Ltda. v. Case Corp.*, 541 F.3d 719, 724-25 (7th Cir. 2008), *cert. denied*, 555 U.S. 1175 (2009) (summarizing cases that discuss the need for an inquiry into the circumstances of negotiation before determining that the complaining party was in a position to understand the effect of the clause).

opportunity to obtain their own independent evaluation of the value of the stock; all parties were represented by counsel; the settlement's terms were negotiated at arm's length; and by the time the parties settled the pending lawsuit, there was no relationship of trust between the parties notwithstanding the preexisting fiduciary duties of the officers and directors.

[¶30] On this record, Barr and Warren, who have the burden of offering proof of actionable fraud, have failed to raise any genuine issues of material fact that would undermine the enforceability of the disclaimer-of-reliance clause. We therefore agree with the Superior Court that the disclaimer-of-reliance clause is enforceable against Barr and Warren. Having disclaimed any reliance on the information that the defendants provided, Barr and Warren's fraud claims, which are dependent on the element of reliance, cannot prevail. We now consider whether any of their other claims can survive given that they have disclaimed reliance.

B. Breach of Fiduciary Duty, Unjust Enrichment, and Emotional Distress Claims

[¶31] Barr and Warren argue that the disclaimer-of-reliance clause does not bar their claims for breach of fiduciary duty, unjust enrichment, and infliction of emotional distress. As part of the settlement of the earlier litigation, however, the parties executed a general release in addition to the stock purchase agreement.

That release provided, in part, that Barr and Warren, referred to as "RELEASORS," released Bushmaster and "its officers, directors, employees, subsidiaries, affiliates, agents and attorneys, referred to as . . . 'RELEASEES,'" from

> any and all debts, demands, actions, causes of action, contracts, torts, breaches of duty, controversies, agreements, promises, acts, omissions, damages, liabilities, sums of money, accounts, attorneys fees or liens, interest, penalties and claims of any kind whatsoever, at law, [or] in equity and in administrative proceedings, which RELEASORS, or any of them now have or ever had against RELEASEES, or any of them, from the beginning of the world to the date of these presents.

[¶32] The pivotal events alleged in support of the claims for breach of fiduciary duties, unjust enrichment, and infliction of emotional distress occurred before the release was signed in September 2004. Absent some fraud that vitiates the contract of release, we will enforce its terms and affirm the summary judgment, precluding further litigation of these claims. *See Stanton*, 2001 ME 96, ¶ 13, 773 A.2d 1045; *Harriman*, 560 A.2d at 13; *see also LeClair*, 395 A.2d at 453.

[¶33] For reasons similar to those articulated above, we conclude that the allegations purporting to demonstrate fraud do not, in the absence of reliance, vitiate the terms of the contract of release executed between these parties, who had access to counsel, understood Bushmaster's business, and negotiated clear terms at arm's length in settlement of the earlier contentious lawsuit. Accordingly, we

enforce the general release with regard to the remaining claims, and we affirm the judgment disposing of Barr and Warren's claims.

[¶34] Because our analysis finally disposes of all of Barr and Warren's substantive causes of action, we need not address the availability of rescission as a remedy.

The entry is:

Judgment affirmed.

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